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LETTER DATED 21 JUNE 1999 FROM THE PERMANENT REPRESENTATIVE OF UKRAINE TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I should like to refer to Security Council resolutions 1196 (1998) of 16 September 1998, which were adopted with a view to strengthening effectiveness of arms embargoes in Africa, and Council resolution 1209 (1998) of 19 November 1998, which addresses the problem of illicit arms flows to and in Africa.

As a staunch advocate of the Organization's more active involvement in conflict resolution in Africa, Ukraine commends the Security Council's increased attention to the aforementioned problems. Ukraine is strongly convinced that both strict implementation of Security Council decisions on arms embargoes and effective measures to combat illicit arms flows play an important role in attaining the objectives of peace and security in the African continent.

For its part, and as a State involved in the manufacture and marketing of weapons, Ukraine consistently takes steps at the national level to prevent violations of arms embargoes by its juridical or natural persons, as well as illicit arms transfers from its territory or by its nationals. In this regard, Ukraine is proud of the fact that, although it has been independent for a little less than eight years, it has succeeded in establishing one of the most effective and reliable national policies in this area.

Bearing in mind that the Security Council has recently initiated a review of the implementation of its resolutions 1196 (1998) and 1209 (1998), I have the honour to transmit herewith consolidated information about the national policy and practice of Ukraine regarding export of conventional weapons and related technology (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Volodymyr YEL'CHENKO
Ambassador
Permanent Representative of Ukraine
to the United Nations

Annex

[Original: Russian]

National policy and practice of Ukraine regarding export of conventional weapons and related technologies

1. Basis for Ukraine's national policy and practice regarding export of conventional weapons and related technologies

1. Ukraine's national policy and practice regarding export of conventional weapons and related technologies from the territory of Ukraine provide for:

- export of conventional weapons and related technologies only by export companies that have received the relevant authorization from the Cabinet of Ministers of Ukraine;

- authorization from the State Export Control Service of Ukraine for said companies to negotiate with foreign companies with a view to signing foreign-trade agreements on international transfers of military goods and also on the export of dual-use goods to countries against which a partial embargo on deliveries of such goods has been imposed;

- authorization from the State Export Control Service of Ukraine to export or re-export conventional arms and related technologies;

- declaration and customs clearance of conventional weapons and related technologies;

- obtaining (issuance of), where necessary, appropriate guarantees from the end-user (importer);

- monitoring of the use of such weapons and technologies by users and, where necessary, conduct of inspections at the sites of the declared use or storage of such weapons and technologies;

- penalties for breach of the established procedure for exporting conventional weapons and technologies.

2. Information on international transfers of conventional weapons are submitted to the United Nations on an annual basis in accordance with General Assembly resolution 46/36 L of 9 December 1991, and to the secretariat of the Wassenaar Arrangement within the established time limits and using the agreed nomenclature.

2. National legislation of Ukraine regulating the export of conventional weapons and related technologies

3. Ukraine's legal base for regulating the export of conventional weapons and related technologies includes:

(a) Acts:

- on foreign economic activity;
- on entrepreneurship;
- on the defence of Ukraine;
- on the Security Service;
- on operational investigatory activity.

(b) Presidential decrees:

- on the Statute on State export control in Ukraine of 13 February 1998;
- on further improvement of State export control of 28 December 1996;
- on the Statute on the procedure for issuing permits for the transfer of information constituting a State secret to another State, and the material carriers of such information of 13 May 1997;
- on the Statute on the State Export Control Service of Ukraine of 14 May 1997;
- on questions of military and technical cooperation with foreign States, export control and military-industrial policy of 4 February 1999;
- on the Statute on the Commission on Export Control Policy and Military and Technical Cooperation with Foreign States of 16 March 1999;
- on measures to improve military and technical cooperation of Ukraine with foreign States of 21 April 1999;
- on the introduction of amendments and additions to the Statute on the State Export Control Service of Ukraine of 10 May 1999.

(c) Decisions of the Cabinet of Ministers:

- on the approval of the Statute on the Government Commission on Export Control Policy of 3 November 1997;
- on the Statute on the procedure for State monitoring of international transfer of military goods of 8 December 1997;

- on the Statute on the procedure for granting foreign economic agents the right to export and import military goods and goods containing information constituting a State secret of 8 June 1998;

- on the Statute on the procedure for State monitoring of negotiations involving the conclusion of foreign economic agreements (contracts) on international transfers of military goods and dual-use goods of 4 February 1998.

4. The Supreme Council of Ukraine is currently considering a bill on export control.

3. Principles and procedures for the granting in Ukraine of the relevant permits for the export of conventional weapons and related technologies

5. In granting permits for the export of conventional weapons and related technologies, Ukraine pursues an appropriate national policy and, in particular, ensures compliance with the relevant restrictions established by the Security Council resolutions, and abides by the relevant recommendations of the General Assembly and decisions of the Organization for Security and Cooperation in Europe. In addition, Ukraine fulfils its commitments as a party to the international regulations with respect to export controls for conventional arms and dual-use goods and technologies - the Wassenaar Arrangement.

6. In examining exporters' applications, Ukraine's export control bodies make use of lists of firms (companies) known throughout the world as violators of the international principles governing the transfer of conventional weapons and dual-use goods.

7. The procedure for examining applications for the export of conventional weapons and related technologies was established by the decision of the Cabinet of Ministers of Ukraine on approval of the Statute on the procedure for conducting examinations in the area of export control of 15 July 1997.

8. In order to obtain an export permit, a Ukrainian exporter must send the State Export Control Service an application that follows the established model and attach the following documents:

- a certificate of registration and a document confirming the right to export military goods under the declared nomenclature;

- a notarized copy of the foreign-trade agreement (contract) on the export of the goods indicated in the application;

- technical data on the purpose and possible uses of the goods;

- the original copies of the documents containing guarantees from the importer and end-user of the goods.

9. The decision to grant or refuse authorization to export goods is taken by the State Export Control Service following its consideration of the conclusions of an interdepartmental examination. Problems relating to the granting of authorization are referred to the Commission on Export Control Policy and Military and Technical Cooperation of the Office of the President of Ukraine. The State Export Control Service invites subdivisions of ministries and departments to participate in the examination of exporters' applications for the export of conventional weapons and dual-use goods and technologies.

10. Ukraine issues two types of licences: the State Export Control Service's one-time permit and its general permit. Only a one-time permit can be used for weapons exports, while both one-time and general permits are issued for the export of dual-use goods.

11. If a Ukrainian or foreign entrepreneur violates the conditions or rules governing the international transfer of military goods indicated in the permit, or if circumstances arise that may be harmful to Ukraine's national security interests or contravene its obligations under international agreements, the State Export Control Service may temporarily suspend or cancel a permit.

12. When an entrepreneur loses his right to engage in foreign-trade transactions involving military goods, the permits issued to him by the State Export Control Service cease to have effect.

13. In the event of a reorganization or change in the name of a juridical person, the entrepreneur is obliged to apply within 15 days for a new permit.

14. The temporary export of goods for demonstration at exhibitions or fairs, or for publicity, testing or another similar purpose, may be authorized by the State Export Control Service as long as such export does not involve a transfer of ownership rights. In all cases, the maximum period for temporary export may not exceed one year. In issuing temporary-export permits, the State Export Control Service sets the obligatory condition that the property must be returned.

15. Transit of goods through the territory of Ukraine is permitted provided that the export company or foreign company has received prior approval from the State Export Control Service.

4. Policy regarding the obtaining and verification of end-user and place-of-use guarantees

16. The procedure for obtaining guarantees relating to the end-user of the goods and the place where the goods are to be used provides that the exporter must obtain from the importer:

- reliable information on the end-user, intended use and place of use of the goods specified in the agreement (contract);

- an undertaking to import the goods only into the country specified;

- an undertaking not to re-export the goods to third countries without the prior consent of the exporter and the export-control authorities of Ukraine and the user-country.

17. The requisite undertakings and guarantees by the importer to the exporter may be submitted in the form of an import certificate, an end-use certificate and/or other documents that contain them. The procedure for drawing up such documents is established by the legislation of the user-country. The authenticity of the documents is verified by the State Export Control Authority, the Ministry of Foreign Affairs, the Security Service of Ukraine and other authorized bodies both during the stage at which the exporter's application is examined and when the goods are transferred.

5. Judicial and administrative sanctions against exporters who violate the national control regime

18. Ukrainian legislation makes it possible to combat violations in the area of international transfers of controlled goods and to take action against the guilty parties under criminal, administrative and civilian law.

19. The Ukrainian acts on the Security Service of Ukraine (art. 2) and on operational investigatory activity (art. 1) assign law-enforcement agencies the basic tasks of preventing, identifying, halting and exposing crimes through the investigation and establishment of the facts relating to the illegal activities of individuals or groups.

20. The Civil Code of Ukraine (arts. 48, 49 and 50) establishes rules for determining whether or not an agreement meets the requirements of legislation and sets out the material responsibility for parties to an illegal agreement.

21. The provisions of the Customs Code of Ukraine (arts. 103, 111, 113 and 114) set out responsibility for violation of customs rules. Such violations are punishable by monetary penalties (fines), confiscation of property, administrative detention of property and confiscation of documents.

22. A considerable number of infractions in the field of exports of weapons and dual-use goods are covered by the Criminal Code of Ukraine (arts. 221, 221 (1), 222, 228 (2), 228 (4), 228 (5), 228 (6), 229 and 70).

23. Article 70 of the Criminal Code deserves particular attention, since it classifies radioactive substances excluded from free circulation, weapons, munitions, explosives and so forth as contraband. Article 228 (6) of the Criminal Code prohibits the export from Ukraine of raw materials, materials and equipment for the manufacture of weapons, as well as military and special technology.

24. To date, the State Export Control Committee has established instructions for conducting investigations of violations by foreign companies of export-control rules and procedures, as well as the procedure for verifying Ukrainian companies' compliance with their commitments to use military goods and dual-use goods imported with the provision of State guarantees for their declared purposes.